

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

DONNA WOOD, CAELAN DOHERTY, MAX GOLDSTEIN, BRIDGET LOGAN, JAMES KYLE NEWMAN, LAKISHA WATSON-MOORE, ALAN ROBINSON, ALEXANDRA MARIE WHEATLEY-DIAZ, ROBIN CEPPOS, NICK COKER, individually and on behalf all others similarly situated, and CHERYL BALDWIN, JONATHAN BARRIO, DESMOND BATTS, GARRETT BECKENBAUGH, COCHIESE BOWERS, MILES CEPLECHA, MELINDA CIRILO, JANE CONRAD, ROBERT CORDOVA, JR., CHRISTINE DOCZY, RACHEL DOUGLAS, THERESA EDWARDS, ELIZA FINK, JASON FINKELSTEIN, ILSE MENDEZ FRAGA, JOSH FREDRICKSON, MARIA GONZALEZ, NATHANIEL ROBERT GROH, BRANDI HARRIS, PETER KAMARA, MACK KENNEDY, MADISON OLIVER MAYS, PATRICK MCHUGH, FRIDA MICHELLE NARANJO, PAUL MONTEROSSO, REY MURPHY, JOSEPH NESTOR, LUKE NICHOLAS, JOSEPHINE OLINGER, ALEC SILVESTER, DANIEL SMITH, CHRIS SOTH, AUDRA TELLEZ, CARLOS TORRES, ELLIOTT TRICOTTI, GLORIA TYLER, JESSE WEINBERG, CLEM WRIGHT, ANOOSH YARAGHCHIAN, and JESUS ZAMORA, individually,

Plaintiffs,

v.

MIKE BLOOMBERG 2020, INC.,

Defendant.

No. 20 Civ. 2489 (LTS) (GWG)

Judge: Hon. Laura T. Swain

Magistrate Judge: Hon. Gabriel W. Gorenstein

**DECLARATION OF JUSTIN M. SWARTZ IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

I, Justin M. Swartz, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner at the firm of Outten & Golden LLP (“O&G”) in New York, NY. I am admitted to practice before this Court. Along with lawyers from Shavitz Law Group, P.A., I am one of the lawyers primarily responsible for prosecuting Plaintiffs’ claims on behalf of the collective.

2. I make this declaration in connection with Plaintiffs’ Opposition to Defendant’s Motion to Dismiss.

3. I have personal knowledge of the matters set forth herein and would so testify if called as a witness at trial.

**Plaintiff Wheatley-Diaz’s PAGA Notice and the Parties’ Tolling Agreement**

4. On March 31, 2020, Plaintiff Alexandra Marie Wheatley-Diaz filed a notice with the California’s Labor & Workforce Development Agency (“LWDA”) stating that she intended to bring claims for penalties under PAGA.

5. Plaintiffs served a copy of the PAGA letter on the Campaign’s registered agent, by certified mail, as required by Cal. Lab. Code § 2699.3(a)(1).

6. Plaintiffs notified the Campaign on October 19, 2020 that they would seek leave to file their TAC substituting the current Michigan and California Representatives and adding PAGA claims but stated that, in the interests of efficiency, they would try to postpone any filing until the Court ruled on the Campaign’s partial motion to dismiss.

7. On November 25, 2020, Plaintiffs sent a draft of the TAC to the Campaign and requested its consent to file it. The Campaign did not provide any response.

8. On January 4, 2021, Plaintiffs again requested that the Campaign provide its position on the TAC.

9. Plaintiffs stated that they planned to file the TAC soon, but that they would postpone filing if the Campaign agreed to toll the statute of limitations for the PAGA claims.

10. The Campaign agreed to toll and, on May 18, 2021, the parties executed a tolling agreement. The parties entered into the tolling agreement for the express purposes of protecting Plaintiffs' ability to plead the PAGA claims.

11. The tolling agreement explicitly provides for just one mechanism to cancel its effect and remains operative "until five (5) days after either party gives written notice of cancellation of tolling by email to the other party."

12. Neither party has given such notice, still to this day.

13. The tolling agreement further provides, "California Representatives shall refrain and forebear from seeking leave to add the Claims to the Action . . . without giving the Campaign five (5) days written notice by email."

14. Plaintiffs complied with this notice requirement on May 20, 2022.

\* \* \*

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: October 18, 2022  
New York, NY

/s/ Justin M. Swartz  
Justin M. Swartz  
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